

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

AURELIA SHERRILL and BELVIN))	
SHERRILL,)	
)	
Plaintiffs,)	Case No.:
)	
v.)	
)	
AZIYO BIOLOGICS, INC.,)	
MEDTRONIC, PLC, MEDTRONIC)	
USA, INC., and MEDTRONIC, INC.,))	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Aziyo Biologics, Inc. (“Aziyo”), expressly reserving all rights otherwise to respond to this lawsuit, hereby removes the above-captioned case, which was filed in the General Court of Justice for the State of North Carolina, Superior Court Division, Iredell County as Case No. 21-CVS-2797, to the United States District Court for the Western District of North Carolina.

INTRODUCTION

1. On or about October 8, 2021, Plaintiffs Aurelia Sherrill and Belvin Sherrill (“Plaintiffs”) filed this product liability action entitled *Aurelia Sherrill and Belvin Sherrill v. Aziyo Biologics, Inc., Medtronic, PLC, Medtronic USA, Inc., and*

Medtronic, Inc., Case No. 21-CVS-2797, in the Superior Court of Iredell County, North Carolina.

2. On November 2, 2021, Plaintiffs effectuated service on Aziyo of its Summons and Complaint, attached hereto as **Exhibit A**.

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) on the basis of diversity of citizenship and amount in controversy.

4. This case is removable pursuant to 28 U.S.C. § 1441(b).

5. Pursuant to 28 U.S.C. § 1446(a), Aziyo has attached to this notice “a copy of all process, pleadings, and orders served upon” it. *See Exhibit A*.

DIVERSITY OF CITIZENSHIP

6. Plaintiffs Aurelia Sherrill and Belvin Sherrill are residents of the City of Statesville, Iredell County, North Carolina.

7. Defendant Aziyo Biologics, Inc. is a Delaware corporation with its principal place of business located at 12510 Prosperity Drive, Suite 370, Silver Spring, Maryland 20904. Thus, Aziyo is a citizen of Delaware and Maryland.

8. Defendant Medtronic plc¹ is an Irish corporation with its principal place of business of business located at 20 Lower Hatch Street, Dublin, 2, Ireland. Defendant Medtronic plc is a citizen of Ireland, which can only be

¹ Medtronic plc has not appeared in this action and reserves any all rights and defenses, including those regarding personal jurisdiction and service of process.

served pursuant to the Hague Convention. *See* Hague Convention on Service, art 1. Because Plaintiffs have not served Medtronic plc through the Hague Convention, it is not a party that has “been properly joined and served” as required under 28 U.S.C. 1446(b)(2)(A).

9. Defendant Medtronic USA, Inc., is a Minnesota corporation with its principal place of business located at 710 Medtronic Parkway, Minneapolis, Minnesota 55432-5604. Thus, Defendant Medtronic USA, Inc. is a citizen of Minnesota.

10. Defendant Medtronic, Inc. is a Minnesota corporation with its principal place of business located at 710 Medtronic Parkway, Minneapolis, Minnesota 55432-5604. Thus, Defendant Medtronic, Inc. is a citizen of Minnesota.

11. Aziyo, Medtronic USA, Inc., and Medtronic, Inc., the only parties in interest properly served as defendants, are not citizens of the state of North Carolina. Therefore, complete diversity exists between all the parties.

AMOUNT IN CONTROVERSY

12. The allegations set forth in the Complaint establish that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs.

13. Plaintiffs seek damages for negligence, defective design, breach of implied warranty, breach of express warranty, loss of consortium, and punitive

damages in connection with injuries they allege were caused by Aziyo's FiberCel product.

14. At a minimum, Plaintiffs are seeking damages in excess of \$100,000, not including interest and costs. (Exhibit A, at Compl., ¶¶ 53, 67, 86, 91).

15. Plaintiff Aurelia Sherrill alleges that she underwent spinal surgery and that her surgery involved the use of FiberCel, which was contaminated with tuberculosis bacteria. (*Id.*, ¶¶ 30, 32, 34). She alleges that she began experiencing lower back pain approximately three weeks following the implant surgery, and that she has been forced to undergo a grueling medical protocol to manage her tuberculosis diagnosis. (*Id.*, ¶¶ 35, 38). She further alleges that she has experienced significant side effects from the extensive treatments causing a cascade of sequential complications caused by the FiberCel, and that she will require continued medical monitoring now and into the future to monitor her health related to the ongoing and serious nature of her tuberculosis diagnosis. (*Id.*, ¶¶ 39, 41).

16. Plaintiff Belvin Sherrill alleges that for a significant period of time, he has lost the consortium of his spouse, Plaintiff Aurelia Sherill, including the marital services, society and companionship of their marital relationship. (*Id.* ¶¶ 95–96).

OTHER REQUIREMENTS FOR REMOVAL

17. Aziyo was served with the Complaint on November 2, 2021. Thus, this Notice of Removal is being timely filed within the thirty (30) days of service of initial pleadings pursuant to 28 U.S.C. § 1446(b).

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) and 1446(a) because the United States District Court for the Western District of North Carolina, is the federal judicial district embracing Iredell County, North Carolina, where the state court action was originally filed. *See* 28 U.S.C. § 113(c).

19. Defendants Medtronic USA, Inc. and Medtronic, Inc., which are the only Medtronic entities that have been properly served in this matter, consent to the instant Removal.

20. Written notice of the filing of the Notice of Removal will be served on Plaintiffs' counsel and filed with the Superior Court of Iredell County, pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal to the United States District Court is attached hereto as **Exhibit B**.

21. As of the date of this filing, there are no pending motions in this matter.

CONCLUSION

WHEREFORE, the Defendant Aziyo Biologics, Inc. requests that the above-entitled matter currently pending in the General Court of Justice for the State

of North Carolina, Superior Court Division, Iredell County be removed to the United States District Court for the Western District of North Carolina.

Dated: December 2, 2021

Respectfully submitted,

BOWMAN AND BROOKE LLP

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**Attorney for Defendant
Aziyo Biologics, Inc.**

CERTIFICATE OF SERVICE

I, Patrick J. Cleary, the undersigned Counsel of Bowman and Brooke, LLP, attorney for **Defendant Aziyo Biologics, Inc.**, hereby certify that on December 2, 2021, I served the foregoing **Notice of Removal**, to the following counsel of record, via electronic mail and by mailing a copy of the same by United States Mail, postage prepaid, to the following:

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